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REMARKS

The Office Action mailed April 14, 2006 has been received and the Examiner's comments carefully reviewed. Claims 20-26 have been amended. Claims 32-41 have been added. No new subject matter has been added. Claims 13-18 have been cancelled. Claims 20-41 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

The issues raised by the Examiner will be addressed in the order presented in the subject Office Action.

Rejections Under 35 U.S.C. §112

I. Claims 23-26 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. In particular, the Examiner asserts that claims 23-26 mainly constitute process limitations, and that it is indefinite as to what structural features are defined by these limitations.

Applicants have amended claims 23-26 to associate the recited limitations of the claims with appropriate structural features. In light of these amendments, Applicants respectfully request withdrawal of this rejection.

II. Claims 20-31 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicants respectfully traverse this rejection and request reconsideration in light of the following comments.

A. **Claims 20-26 and 29-31**

To make a rejection based upon non-enablement, the Examiner "must provide a reasonable explanation as to why the scope of protection provided by a claim is not adequately enabled by the disclosure." The Examiner's explanation "should focus on those factors, reasons, and evidence that lead the Examiner to conclude that the specification fails to teach how to make and use the claimed invention without undue experimentation." For example, in a case of missing information, the Examiner should

"specifically identify what information is missing and why one skilled in the art could not supply the information without undue experimentation." MPEP 2164.04

The Examiner's current explanation as to why the scope of the present claims is not adequately enabled by the disclosure is that Applicants' specification does not provide sufficient direction as to how one estimates the amount of insulation needed for a specific size tower so that the claimed invention is achieved.

However, in evaluating the specification against the recited claims, "[t]he Examiner should determine . . . what the subject matter is when the claim is considered as a whole, not when its parts are analyzed individually." "All that is necessary is that one skilled in the art be able to practice the claimed invention, given the level of knowledge and skill in the art." MPEP 2164.08

Applicants submit that determining the amount of insulation needed for the specific size tower does not require undue experimentation by one having skill in the art. To support this position, Applicants have previously filed the Declaration of Mr. Ronald Wainberg, an Expert in the field of Solid Waste Management. In the Declaration, the Expert makes clear that, in his opinion, one of skill in the art would know how to make an insulated tower to provide the claimed invention. To support his conclusion, the Expert included factual evidence in the Declaration. For example, the Expert noted various passages from Haug, *The Practical Handbook of Compost Engineering* (Lewis Publishers 1993)("The Handbook"). These passages support the conclusions that undue experimentation is not needed to make and use an insulated tower. The Expert even pointed to standards used in the industry, noting that the insulation needed to maintain the desired temperature range can be determined by one of skill in the art from ISO 6946 calculations.

In response to the Declaration, the Examiner asserts that instead of relying upon citations in the specification, the Expert relies upon The Handbook, thereby further evidencing non-enablement. First, Applicants note that the specification need not teach, and preferably omits, what is well known in the art. MPEP 2164.01. Citation from the specification is therefore not required as evidence of what is well known in the art.

Second, weight given to a declaration will depend upon "the amount of factual evidence the declaration contains to support the conclusion of enablement." An "Expert's

opinion on the ultimate legal conclusion must be supported by something more than a conclusory statement." MPEP 2164.05. Therefore, it is submitted that the Expert's inclusion of evidence from The Handbook in the Declaration does not evidence non-enablement, but rather strengthens the evidentiary value of the Expert's conclusion.

In short, the question is whether or not one of skill in the art would be able to determine the **amount of insulation** needed to make and use a tower, without undue experimentation. It is respectfully submitted that at a minimum, the Expert's opinion supported by factual evidence cited in the Declaration clearly demonstrates that one of skill in the art can make and use an insulated tower in accordance with the claims without undue experimentation.

At least for this reason, Applicants respectfully request withdrawal of the rejection of claims 20-26 and 29-31.

B. Claims 27 and 28

As previously discussed, to make a rejection based upon non-enablement, the Examiner "must provide a reasonable explanation as to why the scope of protection provided by a claim is not adequately enabled by the disclosure." MPEP 2164.04

It is respectfully noted that neither claim 27 nor claim 28 recites a limitation relating to insulation. The scope of protection of each of claims 27 and 28 therefore has no relation to the stated basis for the non-enabling rejection.

Applicants further submit that the amount of insulation is not essential matter to require the recitation of the amount of insulation in the claims; as evidenced by U.S. Patent 4,062,770, which the Examiner uses as a basis for anticipating claims 27 and 28. In U.S. patent 4,062,770, a method of and apparatus for digesting organic waste is disclosed. The apparatus includes a vessel 1 covered by heat insulation 2. Column 6, lines 19-20. No further details or description of the heat insulation (e.g., the amount of insulation) is provided. The '770 patent claims recite a method of continuously digesting material. Nowhere does the claim recite the amount of insulation required to accomplish the method. It is respectfully submitted that such information is omitted because the information is well known by those of skill in the art. (See MPEP 2164.01 stating that a patent need not teach, and preferably omits, what is well known in the art.)

In summary, claims 27 and 28 do not recite an "insulation" limitation to which the Examiner states is the basis for non-enablement. Claims 27 and 28 further do not require recitation of such a limitation, as the limitation is not essential matter and/or is well known to those of skill in the art. Applicants therefore respectfully request withdrawal of the rejection of claims 27 and 28.

Rejections Under 35 U.S.C. §102

The Examiner rejected claims 27 and 28 under 35 U.S.C. §102(b) as being anticipated by Kneer (U.S. Patent 4,062,770). Applicants respectfully traverse this rejection.

Claim 27 recites a composting system including a vertical tower having one or more compartments. A base of each compartment is fitted with a grate and a plenum. Output is removed from the compartment through the grate. Air is induced into the compartment through the plenum. Claim 28 recites a composting system including a vertical tower, a grate at a base of the tower through which output is removed, and a plenum at the base of the tower through which airflow is induced.

Kneer does not disclose a tower having a grate through which output is removed. In contrast, Kneer discloses a vessel 1 having an opening containing a slide valve 10. Material is removed from the vessel 1 via a screw 9 through the opening, not through a grate, as required by claims 27 and 28.

Kneer does not disclose each and every limitation recited in claims 27 and 28. At least for this reason, Applicants respectfully submit that claims 27 and 28 are patentable.

New Claims 32-41

Support for new claims 32-41 is found in the specification. For example, support for claims 32 and 37 is found on page 3, at lines 15-20; support for claims 33, 38 is found on page 3, at line 1; support for new claims 34-36 and 39-41 is found on page 10, at lines 11-13, and in Figure 1.

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Claims 32-36 depend upon claim 27. Claims 37-41 depend upon claim 28. At least for the reasons discussed with regards to claims 27 and 28, it is respectfully submitted that claims 32-41 are patentable.

SUMMARY

It is respectfully submitted that each of the presently pending claims (claims 20-41) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

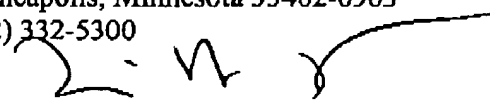
Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.

Respectfully submitted,



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